

CRIMINAL REVISION*Before U San Maung, J.*

PEER MOHAMED (APPLICANT)

v.

UNION OF BURMA (RESPONDENT). *

C.C.
1965

Jan. 16.

Foreigners Registration Act, s. 5 (1)—non-renewal of certificate—Union Citizenship Act, s. 4 (2)—not incumbent to produce certificate under s. 6 (2).

Held: There seems to be considerable confusion in the minds of some magistrates regarding the certificates granted under s. 6 (2) of the Union Citizenship Act, to persons who are deemed to be citizens under s. 4 (2) thereof.

It is not incumbent on a person claiming to be a citizen under s. 4 (2) to ask for the issue of such a citizenship certificate. If he can prove that he comes under s. 4 (2) in any proceeding against him, he is not bound to produce the certificate under s. 6 (2).

Held also: In such a serious matter involving the question of citizenship the recording of evidence by a Magistrate should not be so cryptic. The case against the Applicant should be retried carefully by another magistrate.

—for the applicant.

Khin Sein (Government Advocate) for the respondent.

U SAN MAUNG, J.—In Criminal Regular Trial No. 3621 of 1963 of the 9th Additional Magistrate, Rangoon, the applicant Peer Mohamed was convicted under section 5(1) of the Registration of Foreigners Act, 1940 for failure to renew his Foreigners Registration Certificate HTY. 13484/49 when it expired on the 1st October 1956. The defence of the applicant was that since he must be deemed to be a citizen of the Union as provided for in Sub-section (2) of section 4 of the Union Citizenship Act, 1948, he was not bound to renew the Foreigners Registration Certificate. The applicant gave evidence on behalf of his own defence and cited two witnesses in support of his claim. He was nevertheless convicted under section

* Criminal Revision No. 165 (B) of 1964.

Review of the order of the 9th Additional Magistrate of Rangoon, dated the 29th day of November 1963, passed in Criminal Regular Trial No. 362 of 1963 as recommended by the Sessions Judge, Hanthawaddy and Rangoon.

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5 (1) of the Registration of Foreigners Act and sentenced to a fine of K 35 or in default three months' rigorous imprisonment. The applicant being dissatisfied with the order of the trial Court filed an application for revision before the Sessions Judge, Hanthawaddy and Rangoon, and the learned Sessions Judge by his order dated the 7th October 1964 recommended that the conviction and sentence on the applicant be set aside.

I agree with the learned Sessions Judge that the learned Trial Magistrate had not carefully considered whether the claim of the applicant that he must be deemed to be a citizen under section 4(2) of the Union Citizenship Act, 1948, should be accepted. From what I can see, the learned Magistrate had been very slipshod in the manner in which he recorded the evidence of the witnesses cited by the applicant. In such a serious matter as this, his recording of the evidence should not be so cryptic. I would accordingly set aside the conviction on the applicant and direct that the case against him be retried more carefully by such learned Magistrate as may be selected by the District Magistrate.

In this connection, I would like to observe that there seems to be considerable confusion in the minds of some Magistrates regarding the certificates granted under section 6(2) of the Union Citizenship Act, 1948 to persons who are deemed to be citizens under section 4(2) thereof. It is not incumbent on a person claiming to be a citizen under section 4(2) to ask for the issue of such a citizenship certificate. It is no doubt to his interest that he should be armed with a certificate which will be conclusive evidence as to the existence of his citizenship under section 4 (2) *vide* sub-section (3) of section 6. However, if he can prove that he comes under section 4 (2) in any proceeding against him, he is not bound to produce the certificate under section 6 (2). These observations should be borne in mind by the Magistrate who retries this case.